

Montana Water Court
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MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANT: Lauriann W. Cooney

CASE 43B-0750-R-2022

43B 36572-00

43B 36573-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Claim 43B 36572-00 appeared in the Preliminary Decree with the following issue remark:

ON AUGUST 25, 1989 THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FILED A MEMORANDUM STATING THAT THERE APPEARS TO BE ERRORS IN THE SOURCE NAME, MAXIMUM ACRES IRRIGATED, AND PLACE OF USE. THIS WILL BE HEARD AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.

Claim 43B 36573-00 appeared in the Preliminary Decree with the following issue remark:

THE CLAIMED SOURCE MAY BE QUESTIONABLE. BASED ON AVAILABLE DATA, THE SOURCE MAY BE SURFACE WATER FROM AN UNNAMED TRIBUTARY OF SOUTH FORK TENMILE CREEK.

The issue remarks were not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence. The Court Minutes issued on December 1, 2022 state:

The abstracts and the 1989 DNRC Memorandum were discussed. Ms. Cooney gave the Court leave to memorialize her responses in these Court Minutes rather than file additional documentation:

For 43B 36572-00 - the following source name clarification remark should be added: SOURCE ALSO KNOWN AS SPRING CREEK

For 43B 36573-00 – the source name should be UNNAMED TRIBUTARY OF TENMILE CREEK, SOUTH FORK

There are no changes to be made to the maximum acres and place of use for claim 43B 36572-00. The Court Minutes is viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. For claim 43B 36572-00, the following clarification remark should be added to the source name: ALSO KNOWN AS SPRING CREEK. There are no changes to be made to the maximum acres and place of use. The remark concerning the 1989 DNRC Memorandum should be removed as addressed. The other remark concerning the source name, point of diversion, and ditch name should be removed as having served its notice purpose.

2. For claim 43B 36573-00, the Preliminary Decree states that the source is TENMILE CREEK, SOUTH FORK. The source name should be UNNAMED TRIBUTARY OF TENMILE CREEK, SOUTH FORK. The issue remark concerning the source name should be removed as addressed and resolved. The other remark concerning the amendment of the timely filed objection during the Temporary Preliminary Decree proceedings should be removed as having served its notice purpose.

CONCLUSION OF LAW

The information provided by the claimant is sufficient to resolve the issue remarks without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim for each claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Lauriann W. Cooney
PO Box 1677
Big Timber, MT 59011

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 36572-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: LAURIANN W COONEY
PO BOX 1677
BIG TIMBER, MT 59011

Priority Date: MAY 23, 1904

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FURROW

Flow Rate: 1.25 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 54.00

Source Name: SOUTH FORK TENMILE CREEK

Source Type: SURFACE WATER
ALSO KNOWN AS SPRING CREEK

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENENW	33	3N	14E	SWEET GRASS

Period of Diversion: APRIL 1 TO OCTOBER 1

Diversion Means: HEADGATE

Ditch Name: SOLBERG-HUYSER DITCH

Period of Use: APRIL 1 TO OCTOBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	14.00		SWNW	34	3N	14E	SWEET GRASS
2	20.00		NWSW	34	3N	14E	SWEET GRASS
3	20.00		SWSW	34	3N	14E	SWEET GRASS
Total:	54.00						

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 36573-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: LAURIANN W COONEY
PO BOX 1677
BIG TIMBER, MT 59011

Priority Date: MAY 23, 1904

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.25 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 56.70

Source Name: UNNAMED TRIBUTARY OF SOUTH FORK TENMILE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSESW	33	3N	14E	SWEET GRASS

Period of Diversion: APRIL 1 TO OCTOBER 1

Diversion Means: HEADGATE

Ditch Name: HUYSER DITCH

Period of Use: APRIL 1 TO OCTOBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	44.00		W2NW	3	2N	14E	SWEET GRASS
2	12.70		SWSW	34	3N	14E	SWEET GRASS
Total:	56.70						